

## ARTICLE 11

### MIDTERM NEGOTIATIONS

**1. Purpose:** The purpose of this article is to provide a process for negotiations during the term of this Master Agreement.

**2. General Provisions:**

- a. The Master Agreement is controlling, and neither the Union nor Management may negotiate nor implement any change that conflicts with this Master Agreement. Only the National Parties may reopen the Master Agreement, in whole or in part, during its term and only upon mutual agreement subject to Article 45 Section 2.
- b. The Parties agree that changing conditions create a need for either Management or the Union to propose midterm negotiations. Either party may propose changes in conditions of employment not in conflict with this Master Agreement during its term.
- c. The parties at all levels are advised to consider Article 8 when contemplating changes in conditions of employment. The Parties acknowledge that pre-decisional involvement does not abrogate a bargaining obligation. If issues are not fully resolved collaboratively, Management will notify the Union and negotiate as appropriate in accordance with the provisions of this article and law.
- d. Management agrees that it will not unilaterally implement changes in personnel policy or practices or conditions of employment, including those originating from terms of dispute settlement agreements, unless there is an emergency or the date of implementation is required by law. In these situations, post-implementation issue resolution or negotiations may be appropriate.
- e. Management may implement changes in personnel policy or practices or conditions of employment that are not in conflict with this Master Agreement after notifying, in writing, the appropriate Union officials of the proposed changes and giving them the opportunity to negotiate, including conclusion of mediation and

impasse procedures if the services of either the Federal Mediation & Conciliation Service (FMCS) or the Federal Service Impasses Panel (FSIP) are invoked.

- f. If negotiations are invoked, the parties at the level proposing the change are obligated to meet or otherwise communicate in a timely manner and bargain in good faith, which may include mediation and impasse procedures.
- g. At the completion of negotiations, the parties agree to support the negotiated agreement.
- h. Nothing in this article shall be construed to limit either party's statutory rights.
- i. Parties may address alleged violations of this Article through *either* the grievance/arbitration process or through filing an Unfair Labor Practice (ULP), but not both.

### **3. Negotiation Procedures:**

- a. The parties agree to use the Article 11 Issue Notification, Response to Notification, and Ground Rules checklists (Appendix F).
- b. Notifications and response timelines. The designated official of the proposing party will furnish Article 11 Issue Notification (as per the checklist) delineating proposed changes to the designated official of the receiving party. After receipt of the Notice, the receiving party has up to 28 days to invoke negotiations using the Article 11 Response to Notification checklist and submit proposed ground rules (as per the checklist) and any initial counterproposals if traditional negotiation process is used. Any additional timelines for exchange of proposals will be mutually agreed upon.
- c. Negotiation Ground Rules:
  - (1) The designated officials, or designees, will establish a ground rules agreement (as per checklist) for each negotiation. The National Parties encourage the use of a facilitated interest-based negotiation (IBN) method, and the use of technologies that reduce the need for travel, but the conducting of a specific negotiation may be by any method and means

agreed to by the designated officials. Regardless of the negotiation method used, the parties are encouraged to work expeditiously.

(2) Facilitation expenses for Article 11 negotiations:

- i. Any expenses incurred for external facilitation will be fully borne by the party issuing the Article 11 notice.
- ii. Travel and per diem expenses incurred for internal facilitation will be borne by the party issuing the Article 11 notice.

d. Designated Officials and Points of Contact:

- (1) For the National level: Designated official for the Union is the Forest Service Council (FSC) President, and copy the FSC Negotiations Committee Chairperson. Designated officials for Management are listed in the [Forest Service Manual \(FSM\) 6100 Delegations of Authority Manual Supplement for negotiations, as amended](#). Copy the appropriate [Labor Relations staff member](#).
- (2) For the Intermediate level: Designated official for the Union is the FSC Vice President, and copy the FSC Negotiations Committee Chairperson. Designated officials for Management are listed in the [FSM 6100 Delegations of Authority Manual Supplement for negotiations, as amended](#). Copy the appropriate [Labor Relations staff member](#).
- (3) For the Local level: Designated official for the Union is the Local President, and copy the appropriate FSC Vice President. Designated officials for Management are listed in the [FSM 6100 Delegations of Authority Manual Supplement for negotiations, as amended](#). Copy the appropriate [Labor Relations staff member](#).

If the proposing party is unclear who the designated official is for a particular organization, the Branch Chief for Labor Management and Employee Relations Policy may be contacted and will provide the name and contact information of the designated official.

- e. Delegation of Authority: The National Party or intermediate-level parties may delegate their authority in writing to negotiate specific issues, otherwise negotiable at their level, to parties at subordinate levels in order to promote more effective and efficient resolution of issues that more directly affect those parties.
- f. Information requests: The Parties agree that information requests must articulate a particularized need necessary to respond to the proposal/issue. When information is requested from the other party, any applicable time limits will be automatically extended equal to the number of days it takes to either receive the information or a written statement that the information does not exist or its release is barred by statutes.
- g. Memoranda of Understanding: Unless mutually agreed otherwise by the negotiating parties, final negotiated agreements will be documented in a Memorandum of Understanding (MOU) and identify the parties to the MOU and its terms. If applicable, the MOU will state whether or not further negotiations may take place at the lower organizational level(s) and state any known conditions that need to be met prior to implementation of the changes giving rise to the negotiations and agreement. The MOU will state any conditions for reopening and/or the duration of the agreement.
- h. Printing and distribution: The timely printing and distribution of negotiated agreements will be the responsibility of Management, unless otherwise agreed. Posted agreements will be in compliance with Section 508 of the Rehabilitation Act of 1973, as amended.

#### **4. Supplemental Agreements:**

- a. Supplemental Agreements are agreements negotiated at the national level during the term of the Master Agreement.
- b. Normally, the subject addressed in a supplemental agreement will be addressed and incorporated into the Master Agreement in term negotiations.
- c. Existing supplemental agreements, not incorporated into the Master Agreement during term negotiations, remain in effect in accordance with their terms.

## **5. Subordinate Agreements:**

- a. Subordinate agreements are agreements negotiated at the Local and intermediate levels during the term of this Master Agreement.
- b. The intermediate- or Local-level parties may bargain subjects that are not specifically covered by this Master Agreement, or which have been identified in higher-level agreements for further negotiations. Negotiated agreements between the Local and intermediate parties shall not duplicate, conflict with, or otherwise be inconsistent with the Master Agreement or supplemental agreements and may be subject to review by the National Parties. All Memoranda of Understanding should be posted on the FSweb.
- c. When subordinate-negotiated agreements later come into conflict with subsequent higher level negotiated agreements, the higher level negotiated agreement will prevail. Subordinate-negotiated agreements will be modified to reflect changes necessitated by the higher level negotiated agreement.
- d. Existing subordinate-negotiated agreements not in conflict with the Master Agreement remain in effect in accordance with their terms.
- e. Any question of validity or noncompliance of a subordinate-negotiated agreement to the Master Agreement or any supplemental agreements shall be submitted by either party to the National Parties for resolution. Questions and issues not addressed in any national agreements, as related to its contents, and whether such issues may be negotiated locally should be raised to the National Parties for resolution. A decision will be made by the National Parties within 30 days. If the parties are unable to agree as to compliance or validity, either party may submit the issue to arbitration.

## **6. Negotiability Disputes and Impasses:**

- a. Negotiability Disputes: If Management believes a written Union proposal is nonnegotiable under 5 USC Chapter 71, it will raise the issue of negotiability in a timely fashion, at the early stages of the negotiation process so that attempts can be made to cure any negotiability problems. If the negotiability issue cannot be

resolved, the Union will be provided, upon written request, with a written statement of the rationale for a claim of nonnegotiability. The Union may submit a negotiability appeal to the Federal Labor Relations Authority (FLRA) in accordance with applicable regulations.

- b. Impasses: In the event of an impasse at any level, the parties may agree to invoke mediation. If unsuccessful or if the parties do not agree to invoke mediation, either party may request assistance from the Federal Mediation and Conciliation Service (FMCS). If the matter remains unresolved, either party may request impasse resolution assistance from the Federal Services Impasses Panel (FSIP).

## **7. Past Practices:**

- a. Privileges of employees that by custom, tradition, and known past practice have become an integral part of working conditions shall remain in effect unless modified pursuant to negotiations or such practices conflict with the Master Agreement, governmentwide regulation, and/or statutory provision(s). When past practices are inconsistent with a governmentwide regulation or law that requires an immediate change on or by a specified date, negotiations may occur post-implementation.
- b. The question of whether or not a particular set of circumstances rises to the level of a condition of employment, the change of which by Management would trigger a bargaining obligation, is a complex legal question. The parties at the intermediate and Local levels are advised to seek advice from the National level.